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10 Attorneys for Defendants  
NATIONAL INVESTMENT CONSULTANTS, INC.,  
11 And WEI M. TSE a.k.a. RAYMOND TSE, and for  
12 Relief Defendant THERESA C. WONG,

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DIVISION OF CALIFORNIA  
SAN FRANCISCO DIVISION

15 U.S. COMMODITY FUTURES TRADING  
16 COMMISSION and THE COMMISSIONER OF  
CORPORATIONS OF THE STATE OF  
17 CALIFORNIA,

18 Plaintiffs,

19 vs.

20 NATIONAL INVESTMENT CONSULTANTS,  
INC, a California corporation, PACIFIC BEST  
21 GROUP LTD, a.k.a. PACIFIC BEST  
COMPANY LTD, a British Virgin Islands  
22 Corporation, YI KERRY XU, an individual,  
RUN PING ZHOU a.k.a. FLORA ZHOU, an  
23 individual, and WEI M. TSE a.k.a. RAYMOND  
TSE, an individual,

24 Defendants,

CASE NO.: 052641 JSW  
Assigned to Hon. Jeffrey S. White

**DECLARATION OF EDWARD  
GARTENBERG IN SUPPORT OF  
MOTION ALLOWING WITHDRAW OF  
COUNSEL OF RECORD FOR  
NATIONAL INVESTMENT  
CONSULTANTS, INC., WEI MAN TSE  
a.k.a RAYMOND TSE and RELIEF  
DEFENDANT THERESA C. WONG**

1 And  
2 THERESA C. WONG, an individual,  
3 Relief Defendant.  
4

Date: June 23, 2006  
Time: 9:00 a.m.  
Dept.: 2

Complaint filed: June 28, 2005  
Trial Date: October 30, 2006

5  
6 I, EDWARD GARTENBERG, hereby declare:

7 1. I am a member of law firm of Thelen Reid & Priest LLP ("Thelen Reid"), counsel  
8 of record in the above matter for defendants NATIONAL INVESTMENT CONSULTANTS, INC.  
9 ("NICI"), PACIFIC BEST GROUP LTD, a.k.a. PACIFIC BEST COMPANY LTD, a British  
10 Virgin Islands Corporation ("Pacific Best"), WEI M. TSE a.k.a. RAYMOND TSE ("Tse") and  
11 Relief Defendant THERESA WONG ("Wong"). I am the partner with primary responsibility for  
12 litigation of this matter on behalf of the foregoing defendants. I have personal knowledge of the  
13 facts set forth herein and, if called as a witness in this matter, I could and would competently  
14 testify thereto under oath. I submit this Declaration in support of Thelen Reid's Motion for Order  
15 Allowing Withdrawal As Counsel of Record for NICI, Tse and Wong.

16 2. My law firm was employed to represent Pacific Best, NICI, Tse and Wong in this  
17 action by a written agreement.

18 3. For the reasons set forth below, Thelen Reid respectfully requests that the Court  
19 grant it leave to withdraw as counsel of record of Pacific Best in the above-captioned action.

20  
21 **Conflict**

22 4. Factors have arisen that I believe permit Thelen Reid to seek the Court's  
23 authorization to be relieved as counsel for Pacific Best. Among other reasons, I believe that  
24 withdrawal is appropriate because a conflict has arisen which impedes Thelen Reid's ability to  
25 continue to act as counsel for NICI, Tse and Wong. While I believe an actual conflict exists  
26 between defendants, at a minimum, there is a potential conflict between these parties.

27 5. Plaintiffs have advised that they intend to seek a contempt order against some or all  
28 of Thelen Reid's current clients. After learning of this information, I made certain inquiries which

1 demonstrated a conflict amongst Defendants represented by Thelen Reid. I am not satisfied that a  
2 written waiver can resolve these conflicts.

3  
4 **Unreasonable Difficulty for Counsel to Proceed**

5 6. I also believe that withdrawal is permissible under CRPC 3-700(C)(1)(d) which  
6 permits withdrawal where a client has made it unreasonably difficult for counsel to proceed  
7 because Pacific Best has failed to cooperate with counsel.

8 7. The defendants are not, and for some time have not, been current in paying their  
9 legal fees. Despite requests, Defendant have failed to come current on their outstanding bills.

10  
11 **No Prejudice Will arise By Granting This Motion**

12 8. In advance of this motion, NICI, Tse and Wong have been provided notice that  
13 absent a substitution of counsel, counsel would move to terminate its representation. I have for  
14 some time requested that NICI, Tse and Wong locate and substitute new counsel to replace Thelen  
15 Reid. I have also advised NICI that corporations may not appear *pro se* in federal court. NICI has  
16 been made aware that, unless it locates new counsel, it could be subject to default or other  
17 liabilities.

18 9. While I have discussed substitution with potential new counsel and/or substitution  
19 in pro per for the individuals, to date, I have not been advised that NICI, Tse and/or Wong have  
20 obtained new counsel.

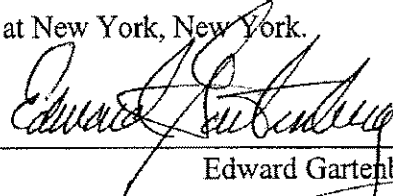
21 10. There is no current discovery pending directed to NICI, Tse or Wong, nor are there  
22 any motions pending. The trial date is October 31, 2006, which is more than five months away.  
23 No prejudice should arise by reason of the granting of this motion.

24 11. Thelen Reid deferred filing this motion last month because of ongoing settlement  
25 negotiations. Given the current status of these negotiations, I do not believe that this motion  
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27  
28

1 should be further deferred.

2 I declare under penalty of perjury under the laws of the United States, that the foregoing is  
3 true and correct.

4 Executed this 15th day of May, 2006, at New York, New York.

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7 Edward Gartenberg  
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